

**KAPLAN FOX & KILSHEIMER
LLP**

Laurence D. King (SBN 206423)
1999 Harrison Street, Suite 1560
Oakland, CA 94612
Telephone: 415-772-4700
Facsimile: 415-772-4707
Email: lking@kaplanfox.com

*Attorney for Plaintiff Lucas Cranor and
Co-Lead Interim Counsel*

**KANTROWITZ, GOLDHAMER &
GRAIFMAN, P.C.**

Melissa R. Emert (*pro hac vice*)
135 Chestnut Ridge Road, Suite 200
Montvale, NJ 07645
Telephone: 201-391-7000
Facsimile: 302-307-1086
Email: memert@kgglaw.com

*Attorney for Plaintiff Anastasiya Kisil
and Co-Lead Interim Counsel*

KIRKLAND & ELLIS LLP

Devin S. Anderson (*pro hac vice*)
Emily M. Long (*pro hac vice*)
1301 Pennsylvania Ave. NW
Washington, DC 20004
Telephone: (202) 389-5000
Facsimile: (202) 389-5200
Email: devin.anderson@kirkland.com
emily.long@kirkland.com

KIRKLAND & ELLIS LLP

Tammy Ann Tsoumas
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
Telephone: 310-552-4200
Facsimile: 310-552-5900
Email: tammy.tsoumas@kirkland.com

*Attorneys for Defendant Illuminate
Education, Inc.*

[Additional Counsel Appear on Signature Page]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

*In re: Illuminate Education Data
Security Incident Litigation*

Case No. 8:22-cv-1404-JVS-ADSx

Class Action

**JOINT RULE 26(f) MEETING
REPORT**

Date: December 19, 2022
Time: 10:30 a.m.
Judge: Hon. James V. Selna
Courtroom: 10C

1 On September 22, 2022, this Court issued an Order in the action entitled *In*
2 *re: Illuminate Education Data Security Incident Litigation*, No. 8:22-cv-01164-
3 JVS-ADS, granting Plaintiffs' Joint Motion to Consolidate Cases [Dkt No. 54].

4 Plaintiffs Anastasiya Kisil, Lucas Cranor, Kristen Weiland, Tara Chambers,
5 Janene Vitro and Lorraine Deniz (collectively the "Plaintiffs") and defendant
6 Illuminate Education, Inc. ("Defendant") submit this Joint Rule 26(f) Meeting
7 Report pursuant to this Court's Order of September 19, 2022, filed in the action
8 entitled *In re: Illuminate Education Data Security Incident Litigation*, No. 8:22-cv-
9 01164-JVS-ADS [Dkt No. 53].

10 **A. Synopsis**

11 **(a) *Plaintiffs:***

12 Illuminate is a software company that provides "a streamlined solution that
13 helps educators to accurately assess learning, identify needs, align whole child
14 supports, and drive school improvement in order to equitably accelerate growth for
15 every learner." Illuminate services approximately 17 million students in
16 approximately 5,200 schools and districts across all 50 states. Illuminate's products
17 collect, among other things, student attendance and grades, names, birth dates, class
18 schedules, behavioral records, and whether they receive special education or free or
19 reduced-price lunches

20 In fact, Illuminate stores demographic information, including name, mailing
21 address, email address, and date of birth, student education and behavioral records,
22 health-related information, including student immunizations, and vision and hearing
23 screening results, and system usernames and passwords. Illuminate touts that "[w]e
24 protect your data like it's our own." However, according to news reports, on
25 January 8, 2022, Illuminate became aware that an unauthorized third party gained
26 access to databases of schools maintained by Illuminate that contained the
27 personally identifiable information ("PII") and protected health information (PHI")
28 of the students (collectively, "Private Information") maintained by Illuminate (the

1 “Data Breach”).

2 Despite Illuminate’s investigation finding that “certain databases, containing
3 potentially protected student information” had taken place between December 28,
4 2021 and January 8, 2022, Illuminate did not notify schools of the breach until
5 March 2022. Based on news reports and other sources, the compromised files and
6 data included names, birthdays, ethnicities, home languages, and student ID
7 numbers of current and former students going back to the 2016-17 school year.
8 Other information, such as whether students receive special education services,
9 class and teacher schedules, and whether students receive free lunch was also
10 disclosed. Academic and behavior information may also have been compromised.

11 Defendant’s failure to ensure that its customers’ data was adequately secure
12 fell far short of its obligations, public commitments and Plaintiffs’ and Class
13 Members’ reasonable expectations for data privacy. Defendant has jeopardized
14 Plaintiffs’ and Class Members’ security of their Private Information and has put
15 them at serious risk of fraud and identity theft. Defendant also failed to ensure that
16 Plaintiffs’ and Class Members’ reasonable expectations for data privacy would be
17 maintained, jeopardizing the security of their Private Information and putting them
18 at serious risk of fraud and identity theft by failing to adequately maintain the
19 security of Plaintiffs’ and Class Members’ Private Information. Plaintiffs have
20 pleaded variety of concrete injuries and categories of damages that have been well
21 recognized as cognizable claims for purposes of demonstrating standing and
22 obtaining monetary and injunctive relief in similar data breach cases.

23 **(b) Defendant:**

24 Defendant Illuminate Education, Inc. (“Illuminate”) provides software
25 applications to support educators across the country. In January 2022, Illuminate
26 became aware of suspicious activity affecting certain of its applications. After a
27 reasonable investigation, Illuminate notified schools and school districts that certain
28 student information may have been subject to unauthorized access as part of the

1 cyberattack.

2 Plaintiffs are students in California, Colorado, and New York who allege that
3 their data was stored on Illuminate’s Pupilpath platform. Am. Consolidated Compl.
4 ¶¶ 16-22. That data allegedly included “students’ attendance and grades, names,
5 birth dates, class schedules, behavioral records, and health and economic
6 information such as whether they qualify for special education or free or reduced-
7 price lunches.” *Id.* ¶ 5. Plaintiffs claim that Illuminate also stores “demographic
8 information, including name, mailing address, email address, and date of birth,
9 student education and behavioral records, health-related information, including
10 student immunizations and vision and hearing screening results, and system
11 usernames and passwords.” *Id.*

12 Plaintiffs do not allege that there was any unauthorized access to financial
13 information or social-security numbers as a result of the breach. Nor do they allege
14 that they had their identities stolen or have experienced fraud of any kind as a result
15 of the alleged unauthorized access to certain Illuminate products. Nevertheless,
16 plaintiffs claim that they face “a substantially increased risk of identity theft and
17 fraud, and they must now take immediate and time-consuming action to protect
18 themselves from such identity theft and fraud.” *Id.* ¶ 149. The complaint also
19 alleges that plaintiffs and other putative class members suffered “loss of value and
20 loss of possession and privacy” of their “Private Information.” *Id.*

21 Although plaintiffs have not experienced any fraud or identity theft and
22 cannot identify anyone who has, plaintiffs filed this putative class action seeking to
23 represent a nationwide class and classes of California, New York, and Colorado
24 residents “whose Private information was exposed to unauthorized third parties as a
25 result of the compromise of Illuminate Education, Inc. that occurred between
26 December 2021 and January 2022.” *Id.* ¶¶ 173-74. Plaintiffs assert claims for
27 negligence; negligence per se; invasion of privacy; breach of confidence; breach of
28 contract; and various statutory claims under all three states’ laws. Plaintiffs also

1 seek declaratory relief under 22 U.S.C. § 2201.

2 **B. Legal Issues**

3 Plaintiffs state that the legal issues to be decided include whether Defendant
4 adequately protected Plaintiffs' and putative class members' Private Information;
5 whether Defendant breached its contract with Plaintiffs and the putative class
6 members; the amount of damages to Plaintiffs and the putative class members; and
7 whether this action is proper for class treatment. Defendant further state that the
8 legal issues the Court will need to decide include whether Plaintiffs having
9 standing; whether they were injured by the alleged conduct of Defendant; whether
10 any injuries were caused by Defendant; and whether the statutes Plaintiffs invoke
11 actually apply to Defendant's alleged conduct, among other things.

12 **C. Damages**

13 Plaintiffs will prove damages in a manner consistent with their motion for
14 class certification. Plaintiffs' experts will determine the methodology and amount
15 of class wide damages after information is obtained from Defendant through
16 discovery. Defendant disputes that Plaintiffs suffered any damages as a result of
17 the conduct alleged in the complaint.

18 **D. Insurance**

19 Plaintiffs are not aware of any insurance agreement applicable to the instant
20 case. Defendant will disclose any applicable insurance agreements in accordance
21 with Rule 26.

22 **E. Motions**

23 At this time, the Parties do not anticipate filing any motions seeking to (i)
24 add other parties or claims, (ii) file amended pleadings, or (iii) transfer venue.

25 **F. Discovery and Experts**

26 According to the Court's Order of September 19, 2022, filed in the action
27 entitled *In re: Illuminate Education Data Security Incident Litigation*, No. 8:22-cv-
28 01164-JVS-ADS [Dkt No. 53], the Parties' initial disclosures under Rule 26(a) are

1 due December 12, 2022.

2 Plaintiffs will seek discovery on the following non-exhaustive list of topics:

3 (i) policies and procedures concerning data security and storage; (ii) Defendant's
4 public statements concerning the Data Breach, including on its website; (iii)
5 documents pertaining to the Data Breach at issue and Defendant's knowledge of
6 that Data Breach; (iv) documents relevant to Defendant's investigation of the
7 relevant Data Breach; (v) the number of students, schools, and districts affected;
8 and (vi) evidence on which Defendant intends to rely to support its affirmative
9 defenses.

10 Defendant will seek discovery on the following non-exhaustive list of topics:

11 (i) the specific contract Illuminate entered into with each of Plaintiffs' school
12 districts; (ii) Plaintiffs' allegations of harm; (iii) Plaintiffs' mitigation costs; (iv)
13 Plaintiffs' data-security practices; and (v) other data breaches affecting Plaintiffs'
14 data.

15 **G. Dispositive Motions**

16 At this time, Plaintiffs do not anticipate any significant motions other than
17 their motion for class certification. However, Plaintiffs reserve their right to move
18 for summary judgment if warranted after discovery. Pursuant to the schedule
19 established by the Court, [Dkt No. 43], Defendant will file its motion to dismiss the
20 Complaint 60 days from the filing of Plaintiffs Consolidated Complaint that was
21 filed on November 7, 2022. If the case proceeds, Defendant intends to file a motion
22 for summary judgment.

23 The parties have proposed competing case schedules, which are attached as
24 **Exhibit A.**

25 **H. Settlement and Settlement Mechanism**

26 Although Plaintiffs are open to engaging in settlement discussions in
27 principle, such discussions are unlikely to be productive until the Court rules on
28 Defendant's motion to dismiss and after sufficient discovery is completed. The

1 Parties agree that private mediation would be a suitable form of ADR in this matter,
2 with such mediation to occur within 90 days following the Court's decision on the
3 motion to dismiss.

4 **I. Trial Estimate**

5 Plaintiffs estimate that 5-7 days would be required for a jury trial. Plaintiffs
6 anticipate calling 5-7 witnesses. Given the early stage of this putative class action
7 and the significant issues to still be decided (including whether class treatment is
8 appropriate and the number of experts that will be allowed), Defendant submits that
9 it cannot provide a reasonable estimate for the length of trial and number of
10 witnesses.

11 **J. Timetable**

12 Pursuant to the Court's Scheduling Order, dated August 11, 2022 (ECF No.
13 43), Plaintiffs filed their Amended Consolidated Complaint on November 7, 2022
14 and Defendant's motion to dismiss the complaint is due January 6, 2022. Briefing
15 on the motion to dismiss will not be complete until March 22, 2022. *Id.* In addition
16 to bringing a motion to dismiss for failure to state a claim under Federal Rule of
17 Civil Procedure 12(b)(6), Defendant also anticipates moving to dismiss Plaintiffs'
18 claims for lack of subject matter jurisdiction under Rule 12(b)(1).

19 **Defendant's Position:** Defendants will argue in its forthcoming motion to
20 dismiss that plaintiffs in this matter lack standing to pursue their claims because
21 they have not pled any actual or impending harm arising out of the data security
22 incident. Plaintiffs must establish standing "for each claim that they press and for
23 each form of relief that they seek (for example, injunctive relief and
24 damages)," *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021), and courts
25 in data-breach cases regularly dismiss claims for lack of standing. Defendant
26 submits that discovery should be deferred until after the Court's determination
27 whether it has subject-matter jurisdiction over the claims in this action, and any
28 subsequent discovery deadlines should be keyed off of the Court's disposition.

1 Defendants further submit that because the court's ruling on class
2 certification will determine which merits issues, if any, are litigated on a class-wide
3 basis, class certification should be litigated only after a ruling on the motion to
4 dismiss and fulsome fact and expert discovery. Plaintiffs' proposed schedule, by
5 contrast, makes no sense because it contemplates that their motion for class
6 certification will be filed potentially before this Court has even ruled on a motion to
7 dismiss and before the parties will have the opportunity to conduct fulsome fact and
8 expert discovery. Similarly, summary judgment will need to be disposed of before
9 the parties proceed to trial, and Plaintiffs' schedule has no allowance for summary-
10 judgment motions.

11 Given the important legal and factual issues presented by this case,
12 Defendant's proposed schedule better reflects with the work the parties will need to
13 perform. Defendants have therefore proposed case deadlines that are keyed off of
14 the Court's rulings on each of these dispositive and non-dispositive motions, as laid
15 out in **Exhibit A**.

16 **Plaintiffs' Position:** Plaintiffs submit that discovery has commenced
17 pursuant to the Rule 26 process. Plaintiffs do not agree that discovery should be
18 stayed or phased pending resolution of any of Defendant's forthcoming Rule 12
19 Motions and are unaware of other federal courts imposing any discovery stays in
20 data breach cases. Should Defendant seek a formal stay of discovery, an appropriate
21 motion should be filed according to this Court's procedures. Plaintiffs' proposed
22 schedule, which proposes an April 30, 2024 trial date, and sets proposed dates
23 certain for the close of fact and expert discovery, and class certification and
24 summary judgment motions, is set forth in **Exhibit A**.

25 **K. Other Issues**

26 The Parties are not presently aware of any other issues that may facilitate the
27 just, speedy, and inexpensive disposition of this matter.
28

L. Conflicts

M. Patent Cases

N. Magistrates

Respectfully submitted,

DATED: December 5, 2022

Laurence D. King (SBN 206423)
Matthew B. George (SBN 239322)
Blair E. Reed (SBN 316791)
1999 Harrison Street, Suite 1560
Oakland, CA 94612
Telephone: 415-772-4700
Email: lking@kaplanfox.com
mgeorge@kaplanfox.com
breed@kaplanfox.com

Joel B. Strauss (admitted *pro hac vice*)
850 Third Avenue, 14th Floor
New York, NY 10022
Telephone: 212-687-1980
Email: jstrauss@kaplanfox.com

Justin B. Farar (SBN 211556)
12400 Wilshire Boulevard, Suite 460
Los Angeles, CA 90025
Telephone: 310-614-7260
Email: jfarar@kaplanfox.com

**KANTROWITZ, GOLDHAMER &
GRAIFMAN, P.C.**

DATED: December 5, 2022

By: /s/ Melissa R. Emert
Melissa R. Emert

Melissa R. Emert (admitted *pro hac vice*)
Gary S. Graifman (admitted *pro hac vice*)
135 Chestnut Ridge Road, Suite 200
Montvale, NJ 07645
Telephone: 201-391-7000
Email: memert@kgglaw.com
ggraifman@kgglaw.com

Plaintiffs' Co-Lead Interim Counsel

KIRKLAND & ELLIS LLP

DATED: December 5, 2022

By: /s/ Devin S. Anderson
Devin S. Anderson

Devin S. Anderson (*pro hac vice*)
Emily M. Long (*pro hac vice*)
1301 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202-389-5000
Facsimile: 202-389-5200
Email: devin.anderson@kirkland.com
emily.long@kirkland.com

Tammy Ann Tsoumas
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
Telephone: 310-552-4200
Facsimile: 310-552-5900
Email: tammy.tsoumas@kirkland.com

Counsel for Defendant

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Devin S. Anderson, attest that concurrence in the filing of this document has been obtained from the other signatory.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of December, 2022, at Salt Lake City, Utah.

/s/ Devin S. Anderson
Devin S. Anderson

EXHIBIT A
Judge James V. Selna
Presumptive Schedule of Pretrial Dates

Matter	Time	Weeks before Trial	Plaintiffs' Request (insert specific date)	Defendant's Request (insert specific date)	Court Order
<i>Fact Discovery</i>					
Fact discovery begins			Plaintiffs submit that fact discovery has already begun per F.R.Civ.P. 26.	14 days after decision on MTD, if claims are allowed to proceed	
Close of fact discovery			Aug. 15, 2023	9 months after decision on MTD, if claims are allowed to proceed	
<i>Class Certification Motion</i>					
Plaintiffs' motion			June 30, 2023	60 days after close of expert discovery	
Defendant's opposition			Aug. 4, 2023	60 days after plaintiff's motion	
Plaintiffs' reply			Sep. 1, 2023	30 days after defendant's opposition	
<i>Expert Discovery</i>					
Plaintiffs' expert reports			Sept. 15, 2023	30 days after close of fact discovery	
Defendant's expert reports			Oct. 16, 2023	30 days after service of plaintiffs' expert reports	
Close of expert discovery			Nov. 17, 2023	30 days after service of defendant's expert reports	
<i>Summary Judgment Motions</i>					
Motions for summary judgment			Dec. 8, 2023	60 days after decision on class certification	
Oppositions			Jan. 12,	60 days after	

			2024	motions for summary judgment	
Replies			Feb. 2, 2024	30 days after oppositions	
<i>Pre-trial/Trial</i>					
Trial date (jury) (court) Estimated length: 5-7 days	8:30 a.m. (Tuesdays)		April 30, 2024	To be scheduled following determination on summary judgment	
[Court trial:] File Findings of Fact and Conclusions of Law and Summaries of Direct Testimony		-1	April 23, 2024	1 week prior to trial	
Final Pretrial Conference; Hearing on Motions in Limine; File Agreed Upon Set of Jury Instructions and Verdict Forms and Joint Statement re Disputed Instructions and Verdict Forms; File Proposed <i>Voir Dire</i> Qs and Agreed-to Statement of Case	11:00 a.m. (Mondays)	-2	April 15, 2024	2 weeks prior to trial	
Lodge Pretrial Conf. Order; File Memo of Contentions of Fact and Law; Exhibit List; Witness List; Status Report re Settlement		-3	Apr. 9, 2024	3 weeks prior to trial	
Last day for hand-serving Motions in Limine		-6	March 19, 2024	6 weeks prior to trial	
<i>Other</i>					
Last day to conduct settlement conference			April 30, 2023		
Last day to amend pleadings or add parties			N/A		

ADDITIONAL MATTERS TO BE DETERMINED AT SCHEDULING CONFERENCE

L.R. 16-14 Settlement Choice: (1) CT/USMJ (2) Court Mediation Panel **(3) Private ADR**